RECENT CASES

BANKS AND BANKING—BANK'S RIGHT TO SET-OFF—NOTES NOT YET DUE.—HAYDEN ET AL. V. CITIZENS' BANK OF BALTIMORE ET AL., 87 ATL. REP., 672 (MD.),—*Held,* that a bank holding unmatured notes of a corporation when it goes into a receiver's hands may set off the notes against the deposit to the corporation's credit in the bank.

The general rule is that a bank has a general lien on all moneys and funds of a depositor in its possession for the balance of the general account. *Marsh v. Oneida Bank,* 34 Barb. (N. Y.), 298; *Scott v. Franklin,* 15 East, 427. This is true not only of the general deposit of the customer, but also of any business papers, as notes or bills, belonging to him, which he has intrusted to the bank for collection. *Ex parte Pease,* 1 Rose, 232. But funds deposited for a special purpose, known to the bank, cannot be withheld from that purpose and applied to a debt due the bank from the depositor. *Brown v. Sav. Inst.,* 137 Mass., 262; *Wyckoff v. Anthony,* 90 N. Y., 442; *First Nat'l Bank v. Peltz,* 176 Pa. St., 513. The decisions are in conflict as to the right of a bank to assert a lien for the benefit of notes which it holds, but which are not yet due. In some jurisdictions, if the depositor becomes insolvent before the maturity of the debt, the bank may, as against him or his assignee, apply the deposit to the payment of its claim. *Georgia Seed Co. v. Talmadge,* 96 Ga., 254; *Ky. Flour Co. v. Bank,* 90 Ky., 225; *Demmon v. Bank,* 5 Cush. (Mass.), 194. In Pennsylvania the right of lien in such cases is sustained on the ground that the insolvency operates to mature all debts. *Stewart v. Bank,* 6 Wkly. Notes Cas., 399. This doctrine has received the approval of the Supreme Court of the United States. See *Schuler v. Israel,* 120 U. S., 506, 510. A *contra* rule prevails in other jurisdictions, where it is held that, in order to assert such lien or set-off, the debt must be due. *Bank v. Proctor,* 98 Ill., 558; *Bradley v. Smiths' Sons,* 98 Mich., 449; *Kortjohn v. Bank,* 63 Mo. App., 166; *Bank v. Mahon,* 78 S. C., 408; *Oatman v. Bank,* 77 Wisc., 501. This is on the ground that at law a debt *in futuro* cannot be set off against a debt *in praesenti. Nat'l Bank v. Ritzinger,* 20 Ill. App., 27. In New York this broad rule is qualified, and it is held that insolvency sometimes moves equity to grant a set-off which would not be allowed at law. *Jordan v. Bank,* 74 N. Y., 467. The same conflict of authority exists as to the right of a bank to apply a deceased depositor's account to a note not due at the time of the death of such depositor. See *Nat'l Bank v. Green,* 45 N. J. Eq., 546, and *Hodgin v. Bank,* 124 N. C., 540, where such application is allowed where the depositor's estate is insolvent, and for the *contra* rule see *Appeal of Farmers' and Mechanics' Bank,* 48 Pa. St., 57. Under section 68 of the Bankruptcy Law of 1898, unmatured claims against a bankrupt are the subject of set off in favor of the holder thereof. *Frank v. Nat'l Bank,* 182 N. Y., 264; *Re Glass Co.,* 135 Fed., 77. *Contra, Irish v. Citizens' Trust Co.,* 163 Fed., 880. Where courts of law and equity have been combined, the better rule would seem to be that laid down in the

principal case, even though technically the debt is not due, on the ground that equitable considerations require such off-sets.

BILLS AND NOTES—TRANSFER—CONSIDERATION—PRE-EXISTING INDEBTEDNESS.—MALONE v. NATIONAL BANK OF COMMERCE OF KANSAS CITY, MO., 162 S. W. (TEX.), 369.—The Sheffield Gas Power Co. was indebted to appellee and indorsed over to appellee appellant's notes in part payment of the debt and was given credit for the amount by appellee. *Held,* that there was sufficient consideration to make appellee a *bona fide* holder for value.

The rule of the law merchant was that one who took negotiable paper in discharge of a pre-existing debt was deemed a holder for value and in due course. *Swift v. Tyson,* 41 U. S., 1; *May v. Quimby,* 66 Ky., 96; *Brown v. Leavitt,* 31 N. Y., 113. A limitation was imposed in a few jurisdictions to the effect that one who took in part payment of a pre-existing debt was not deemed a *bona fide* holder for value. *Lyon v. Fitch,* 18 N. Y. Supp., 867. It was also held that the discharge of the debt was essential, the taking as mere security did not constitute value. *Bay v. Coddington,* 5 Johns. Ch. (N. Y.), 54; *Martin v. Banks,* 94 Tenn., 176. But the better rule was that it made no difference whether note was taken as security or in discharge. *Brooklyn City & N. R. Co. v. National Bank of Republic,* 102 U. S. ,14. Art. III, sec. 51, of the Negotiable Instruments Law, under which the principal case is decided, says that "an antecedent or pre-existing debt constitutes value." Under this clause the decisions are almost uniform in holding not only the discharge of the debt to be value but also the taking as security. *Williams v. Usher,* 123 Ky., 696; Brooks v. Sullivan, 129 N. C., 190. But New York would yet limit the holding of the principal case to a case of absolute discharge of the antecedent debt. *Sutherland v. Mead,* 80 N. Y. Supp., 504.

FRAUDS, STATUTE OF—SALE OF LAND.—NICHOLS v. BURCHAM ET AL., 143 N. W. (MICH.), 647.—*Held,* that a receipt given to the purchaser for a sum received on the purchase price of land, is not sufficient under the statute of frauds as a memorandum of the sale of land, where it did not fix a time for making payments.

The fourth section of the English Statute of Frauds provides that no action shall be brought on the contracts enumerated, "unless the agreement * * * or some memorandum or note thereof shall be in writing." See 29 Car. II (1676), c. 3. Similar provisions are to be found in the statutes of the different states in this country. As to the memorandum required, the rule is that it need not formally recite its purpose as a note of the agreement. It is sufficient if it states the agreement with clearness. *Davenport First Church v. Swanson,* 100 Ill. App., 39; *McManus v. Boston,* 171 Mass., 152; *Wade v. Curtiss,* 96 Me., 309. So, a receipt for money paid may be a sufficient memorandum. *Williams v. Norris,* 95